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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue

Addendum

Mission to Italy: comments by the State on the report of the Special Rapporteur*

* Reproduced as received.

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Further to the UN Special Rapporteur's mission to Italy (from November 11 through November 18, 2013), the Government of Italy is in a position to provide the following information (Italy also kindly requests the UN Special Rapporteur to make corrections in the mission's report under reference (UN Doc. A/HRC/26/30/Add.3) in which a few factual errors have been detected):

Introductory remarks

1. The Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article.1; the so-called *personalistic* principle, as laid down in Article. 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of work, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article.2); the principle of equality, as laid down in Article.3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression – as also mentioned in your report (para.10).

2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

3. Within our national system of protection of human rights, mention has to be made, among others, of the Italian constitutional court that deals only with infringements of a constitutional level (The constitutional court consists of fifteen judges; one-third being appointed by the President of the Republic/Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court)[1]. The constitutional court exercises its duty as one of the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local authorities claiming that a state or a regional Act might be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State's organs and decides in proceedings between central and local authorities.

- Procedurally, the court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Art. 134 of the Italian Constitution. The constitutional court decides (and its decisions cannot be appealed on) disputes: 1. concerning the constitutionality of laws and acts with the

[1] The constitutional court consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court.

force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on accusations raised against the head of State in accordance with the Constitution. More generally, this Court decides on the validity of legislation, its interpretation and on whether its implementation, in form and substance, is in line with the Basic Law. Thus, when the court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

4. Under the Introduction to the mission's report under reference (Section I, paras.1 to 5), could you kindly mention under para.2 that your de-briefing was held at the Inter-ministerial Committee for Human Rights within the Ministry of Foreign Affairs?

5. Under para.4, there is a typo when referring to the President of Senate. He is Sen. Pietro Grasso - and not Sen. Piero Grasso.

6. Under Section IV (para.11), the reference to "a period of political turmoil" does not portray correctly the above-mentioned constitutional framework and the relating well-established system of checks and balances in force since the adoption of the above Constitution (1948).

Turning to "Issues of concern", please note the following remarks:

Defamation

7. Freedom of expression and freedom of the press are protected by the Italian Constitution of 1948 in its Article 21, which sets forth: "*Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship [...]*".

8. Article 594 of the Italian Criminal Code addresses insult ("*ingiuria*"), an offence which is distinct from defamation. Defamation is defined under Article 595 as a damage to the reputation/honor of a person through communication with several persons. There are three forms of aggravated defamation: through the allegation of a specific act (Article 595 § 2); through the press or any other means of publicity, or through a public deed (§ 3); and if it is directed to a political, administrative or judicial body (§ 4).

9. Article 596 excludes the defence of justification (proving the truth of the allegation, *exceptio veritatis*), except for the cases of defamation through the allegation of a given act, in three cases: 1) when the defamed person is a public official and the alleged act relates to the exercise of his functions; 2) if criminal proceedings are still pending on the alleged act on the part of the defamed person, or if proceedings are brought against him or her; 3) if the complainant formally requests that the judgment should extend to ascertaining the truth or falsity of the alleged act.

10. Article 596bis extends to the editor, deputy editor, publisher and printer, the application of the provisions of Article 596 dealing with the defence of the truth. Plus, Articles 57 and 57bis of the Criminal Code provide for liability of the editors/deputy editor and publisher or the printer, in case the offence of defamation is committed, for failure to conduct supervision of the content of the publication. Article 58 extends the scope of these provisions to the clandestine press.

11. More specifically, the aim and the rationale behind the relevant provisions of the domestic criminal code indicate the constant balancing between opposite stances. As for "reputation/honor", there is a common understanding to refer to "those conditions on the basis of which the social value of the individual is expressed"; as for "the dignity", there is a common understanding to refer to "the intellectual, physical and social features of

individuals". Thus, consideration should be given to the fact that the protection of the reputation/honor of individuals may result in a stance opposite to freedom of expression, including press, and vice-versa.

12. Hence, the limits to the so-called "right to chronicle" are of the utmost importance and are to be considered therein. Both the Italian legal literature and the case-law have constantly affirmed that the exercise of the right to news reporting (*diritto di cronaca*) and of the freedom of the press guaranteed in Article 21 of the Constitution represents a cause of justification within the meaning of Article 51 of the Criminal Code, thus making the acts (the communication of information damaging the honour, the dignity or the reputation of another person) non punishable. A landmark judgment of the Court of Cassation (*Cassazione civile, sez.* I, October 18, 1984), constantly applied by civil and criminal courts, has set out the three criteria for the application of Article 51: the social utility or social relevance of the information; the truthfulness of the information (which may be presumed (*verità putativa*) if the journalist has seriously verified his or her sources of information); restraint ("*continenza*"), referring to the civilised form of expression, which must not "violate the minimum dignity to which any human being is entitled".

13. The case-law has further clarified that these three criteria cannot fully operate in relation to the right to criticize and to satire. Also, the Italian Constitutional Court (see Decision No. 175, 5 July 1971, in *Raccolta Ufficiale delle Sentenze e Ordinanze della Corte Costituzionale*, Vol. XXXIV, 1971, p. 550) has stated that the exclusions and the limitations of the *exceptio veritatis* provided for in Article 596 of the Criminal Code are not applicable when the defendant exercises the cause of justification related to the freedom of expression recognized by Article 21 of the Constitution, asserting the truthfulness of the information. Importantly, in most cases the truthfulness of the communicated information excludes criminal defamation.

14. In brief, the defence of truth, public interest and responsible journalism are largely recognised by the Italian case law. The Supreme Court has often stated that such a right is lawful when it is exercised under the following circumstances/requirements: 1. social value; 2. truth; 3. correct exposition of the episode under consideration. Along these lines, the so-called "right to criticism" must be exercised within specific borders: 1. correctness of the language; 2. respect for one's rights (Cass. No. 40930/13). However, as a matter of fact, freedom of the press and freedom of expression relating to politics and trade union-areas enjoy more extensive interpretations.

15. At present, various pieces of legislation aimed at amending the criminal discipline of defamation are under discussion before the Italian Parliament. In this context mention has to be made of the so-called "Costa Bill (A.S. 1119)", as already approved by the Chamber of Deputies and currently before the Italian Senate, for examination.

- The amendments proposed to the current legislation are aimed at limiting the use of criminal sanctions for defamation, and introducing the abolishment of imprisonment as a sanction for defamation. The overall purpose of the Bill is also to more clearly delineate defamation, related procedures and remedies, including by extending the scope of the relevant provisions to the audio-visual media and the internet.

- This Bill aims at a more appropriate balance between the safeguards required by the protection of reputation and the unhindered exercise of freedom of expression, including freedom of the press. It also envisages the simultaneous amendment of the provisions of civil and criminal law as a way to respond to the concern for a comprehensive and consistent approach in this field. Efforts have been made to ensure improved criteria for assessing damages resulting from defamation, and a two year time-limit for civil actions for damages has been envisaged, too. As

for civil liability for offences committed by means of the media, when assessing damage, courts shall take into account, in addition to the seriousness of the injury and the circulation and local or national relevance of the concerned media, the reparatory effect of the publication of the rectification with the subsequent effect of excluding the penal punishability.

* In brief, mention has to be made of the following: a two year time-limit for civil actions for damages; an aggravating circumstance if a fact attributed to a person results to be false; prohibitory measures in case of recurrence; a specific increased focus on the role of the editor and the relating liability in case of defamation, as well as the reformulation of Art.57 of the criminal code; the strengthening of the system to discourage the frivolous litigation to avoid mismanagement of the civil action; and the extension to independent journalists and "contributors" of the protection of journalistic sources.

16. With regard to the amount of the fine, according to the proposed new provision amending the Press Law, the fines applicable to the media for defamation will be increased between 5, 000 and 10 000 Euros for defamation via the press with attribution of a specific act. It is understood that the general principle of the application of proportionate sanctions, in accordance with the individual circumstances of the particular case, remains a key requirement. The principle of proportionality also applies to the proposal under Article 13.1, introducing higher fines (between 20 000 and 60 000 Euros) for those allegations being disseminated when known to be untrue, only.

17. In this context, the Venice Commission commended the above Bill in its relevant Opinion 715/2013 of last December 6-7, 2013.

18. Last April 2, 2014, the Italian Parliament approved the law delegating the Government to reform the penal sanctionary system. This envisages the abrogation of the offence of insult which will thus become relevant only in the civil sector.

19. Within this framework, with regard to recommendation under para.76, it should be noted that a normative intervention along those lines could be of a discriminatory nature. Plus, defamation against a public official exercising his/her functions – and thus beyond the right to chronicle and criticism – may result in an event of specific injuriousness, since it is intended against the public service rather than against the person.

- Additional remarks: defamation between private individuals is not included in the above Bill anymore. Plus, when talking about the economic penalty applied through criminal law, more than considering its chilling (rather than intimidating effect), consideration should be given to the different rationale behind civil and criminal proceedings (Paras.20 and 24).

The crime of insult against public officials

20. As for the crime of insult against public officials, the crime under Art.341-bis is not just the result of reintroducing the crime previously envisaged under Art.341 as abolished by Act No. 205/1999 As a matter of fact there are inner differences between the above two crimes. As for the former, it is necessary that it takes place in public places and before various persons; therefore, from a criminal law standpoint, the insult directed against and committed in the presence of only one official is irrelvant. Plus, if the facts mentioned in the statement are proved to be true, the author of that statement will not be punished.

Conflict of interest

21. Act No. 215/2004 ("Legge Frattini") does not deal only with the mass media and information sector, but covers possible conflicts of interest between government responsibilities and professional and business activities in general. Because of its particular nature, the mass media and information sector is the subject matter of a number of specific provisions in that law (see in particular Article 7). These particular provisions do not replace the general rules governing any type of company, but are additional to them. The combined provisions of Articles 1, 2 and 3 of this Act set out its general scope. Article 1 states that the Prime Minister, Ministers, Secretaries of State and Extraordinary Government Commissioners are all "holders of government office" (and are therefore the parties to which this law applies). Article 1, para. 1, also imposes on the holders of government office, obligation to devote themselves exclusively "to promoting the public interests", and prohibits them from "taking actions and participating in collegial decisions when they are exposed to a conflict of interest".

- Article 1 states that the Prime Minister, Ministers, Secretaries of State and Extraordinary Government Commissioners are all "government post-holders" (and are therefore the parties to which this law applies). Article 1(1) also imposes on government post-holders the obligation to devote themselves exclusively "to dealing with public interests", and prohibits them from "performing any acts and taking part in any collective decisions in conflict of interest situations".

- Article 2 lists all activities incompatible with holding a government post. The choice between incompatibility and ineligibility to stand for election has to do with the different purposes of these two institutions in the Italian legal system, as unanimously acknowledged in constitutional legal literature.

  * More particularly, the purpose of ineligibility to stand for election is designed to guarantee the regularity of the electoral process, placing restrictions on the fundamental right of all citizens to stand for election, whereas the purpose of incompatibility, which is more appropriate for the particular situations to which law 215 applies, is to guarantee that the elected representatives perform their responsibilities properly when they are in personal situations which could, in theory, jeopardise proper performance. The causes for ineligibility to stand for election do not therefore stem from any personal situations linked to the *status* of the candidate, but from circumstances that might influence the electoral process such that it would not be considered a genuine demonstration of the will of the electorate.

- Art. 3 defines the concept of "conflict of interest" with reference to two different and alternative situations (as highlighted by the use of the disjunctive conjunction "or"):

a) the existence of one of the situations of incompatibility listed in article 2;

b) the objective consequences of the action by public office-holders on their property or that of their spouses or relations to the second degree.

22. With specific regard to the issue of alleged media concentration and ownership, this could not simply be singled out by the law as a reason of incompatibility with a government position because such provision would have been in contrast with Articles 42 and 51 of the Italian Constitution protecting the fundamental right of individuals to hold private property and the freedom to be elected to public offices. Furthermore, the prohibition of ownership to this effect would have led to a "Forced Sale" determining an irreversible situation upon expiry of public office, which would also contravene to the same articles of the Constitution.

23. The conflict of interest-related provisions are completed by detailing the powers, functions and procedures of the independent administrative Authorities responsible for oversight, prevention and imposing penalties to combat such cases, together with the applicable penalties. For companies in general, this responsibility lies with the Anti-trust Authority as instituted by Act No. 287/1990 (Article 6), for companies in the printed press and media sector, the responsibility lies not only with the above Authority but also with the Communications Regulatory Authority instituted by Act No.249/1997.

24. The Authorities are characterised by their neutrality with regard to the parties with conflicting interests to be resolved and third parties, and are therefore *iusdicenti* in any conflict in which the main players to be regulated confront one another. Hence, their status as arbiters or, in some sectors, as economic judges, not politically conditioned by any preferences in terms of regulating interests - all of which are placed on the same footing, including public interests - ensures strict compliance with the law.

25. The Authorities have wide-ranging powers to conduct investigations and impose penalties in accordance with current legislation. They can also act upon their own initiative, guaranteeing the principle of *audi alteram partem* and the rules of administrative transparency. Their powers do not exclude the powers of the courts or of any other authorities with regard to criminal, civil, administrative or disciplinary offences, and indeed they are required to report any cases of criminal offences to the judicial authorities.

26. On a more specific note, as for information under Para.78, the National Anti-Trust Authority has intervened on various occasions with regard to Act No. 215/2004. As for the person entrusted with governmental position/functions, given the prohibition of direct management (Art.2, para. 1, Letter C), the ownership of his/her assets and the entitlement to economic interests that are connected with, is however ensured. Provided that any legislative reform falls within the Parliament's power, the compliance with the criterion of proportionality always applies, meaning the less onerous set of restrictions being compatible with the requirement to separate the conflicting interests – besides considering "the principle of minimum means", currently in place (i.e. the elimination of situations potentially impeding the proper exercise of the function).

27. Various Bills to reform the above legislation governing conflicts of interest are currently under discussion in Parliament. The following should be mentioned: A.C. 1832 on "Provisions on the prevention of conflicts of interest of parliamentarians and Government positions-holders", submitted on November 21st, 2013 (this envisages that - despite the abstention required – if the oversight Authority detects a situation of conflict of interest, a set of preventive means, consisting in a blind trust, can be provided). To strengthen the above system, the same draft piece of legislation provides for a series of *ex ante* presumed cases of conflicts.

28. Act No. 215/2004 entrusts AGCOM with specific responsibilities in order to avoid the risk that the holder of a governmental position can receive a "special support" by the media that h/she or his/her family's members within the second degree, own. As a matter of fact, the above Authority carries out audits against companies that operate in the so-called Integrated Communications System (acronym in Italian, SIC) and are headed by the holder of governmental position (or by the relatives indicated above), so as to ensure that these companies do not undertake any conduct in contrast with the so-called Parameter-Laws, including the Par Condicio Law – the compliance of which is overseen by AGCOM -, such as getting a special support (an undue advantage).

- The Integrated Communications System (SIC) comprises all the main media business sectors, and may be considered to be the result of the multimedia convergence process in which apparently heterogeneous media (radio, television, newspapers, the Internet, cinema) are gradually drawing closer together and

becoming integrated. This convergence and successful marketing linking heterogeneous media products (for example the sale of CDs or books jointly with newspapers) requires the Legislator to consider the position of a company working in the communications industry within an economic system that comprises all the main media. Moreover, precedents to the SIC existed in earlier legislation (Article 15(5) of Act No. 223/90, and Article 2(1) of Act No. 249/97) prohibiting the constitution of a dominant position in the fields of audio and television communications, multimedia, and publishing, including electronic publishing. The SIC is simply the outcome of the developments in older sectors governed by earlier legislation, necessarily bound up with the innovation brought about by technologies that have subsequently become current.

29. As for RAI, a parliamentary commission is entrusted by law with providing guidance, in order to ensure, inter alia, respect for pluralism. It is, however, the AGCOM's duty to oversee and ensure RAI's compliance with primary and secondary level provisions, with regard to pluralism and public service-related obligations. Along these lines, the procedure for appointing the members of the Board of Directors strengthens the powers of the above Parliamentary Oversight Committee (therefore the Ministry of Economy does not control the Board of Directors). Plus, the role given to the Oversight Committee emphasises the detachment of the public television service from government, giving more room to the opposition.

- As for the constitutional principles of the rights to freedom of opinion and expression, including press freedom and pluralism (Art.21), the widest variety of information and views and the independence of the media are effectively guaranteed. There is no restrictions on access to internet or to create blogs - which have become, over the years, an important source of information.

30. As for para.80, AGCOM already makes available information on the sources for media funding and the progress of related markets within its Annual Report. However, making information publicly available could also be in conflict with the legislation on the right to privacy and trade secret (On this issue, please also refer to the observations provided by the Authority on the protection of personal data and by the Department on Information and Publishing, respectively) (Paras. 77-80).

Public broadcasting service

31. As for public broadcasting service and socially useful messages (Para.41), the normative framework under reference consists of: Act No.150/2000, entitled "Provisions on information and communication by Public Administrations"; Legislative Decree No. 177/2005; and the legislation concerning the so-called Electoral Silence (Article 9 of Act No.28/2000). Indeed, this is a normative framework aimed at the correctness of institutional communication messages to be broadcasted through the public broadcasting service (RAI).

32. In particular, Article 1, para.5, of Act No. 150/2000 sets out the purpose and scope of the information and communication activities of public administrations, primarily the illustration of: new legislation; the activities of the Institutions and their functioning; the promotion of a greater access to public service; raising awareness of issues of public and social interest. The Presidency of the Council of Ministers, Department for Information and Publishing, as provided for by Act No. 150/2000, under Art. 3 (Messages of social utility and public interest), determines the messages of social utility or public interest, to be broadcasted free of charge, by RAI. The above legislation also sets out the modalities, timing and duration of such messages.

33. In order to properly select institutional communication-related projects, as proposed by the central Government, ad hoc guidelines have been annexed to the Communication Plan of the Government dated 5 November 2012, with the aim of identifying the strategic issues of particular social interest. The four thematic areas identified are, as follows:

- identity of the community;
- promotion of cooperation, individual and social responsibility;
- dissemination of knowledge;
- service-related campaigns.

34. A specific safeguard results in a limitation in broadcasting such messages during the period following electoral rallies until the end of the voting process, in accordance with the above-mentioned Electoral Silence (Article 9 of Act No. 28/2000). This provision only allows the communication-related activities carried out in a very impersonal form and only when necessary for the effective performance of the institutional functions of Public Administrations.

35. By the aforementioned normative framework, the Italian legislator intends to regulate in detail the access by the State's administrations to the public broadcasting service, in such a way to ensure non-interference or, alternatively, its action only when necessary to provide the citizens with adequate information on initiatives of inner social utility. Hence, the provisions governing the broadcasting of public notices by the franchisee Corporation at the request of the Prime Minister's Office – Publishing Department (and not by the Prime Minister himself) – are related to the duties of the Prime Minister's office to issue public notices of social relevance, in its capacity as a government department.

- To better understand the meaning of "socially useful messages", we report hereinafter the relevant data provided by RAI, for the year 2013. On average, the Presidency of the Council of Ministers requests that, every year, a hundred campaigns be broadcasted for a total of about 6,500 spots, generally divided into about 20 spots, per day (as scheduled for the three major channels). These campaigns always refer to topics of general interest, such as: 'The new apprenticeship"; "Separate collection of rubbish"; "The toll free number 1522- Anti-violence"; "Power saving"; "Promoting reading"; "HIV-AIDS Prevention' ; "Fight against tax evasion" ; 'Europe is you"; "Expo-2015' ; "Fight against Homophobia"; "Respect for Drinking Water (do not waste it)" ; "Cancer Sickness"; "Forest Fires" ; "Sea-Emergency". For the above reasons, we do believe that the social utility of the message has been always at the core of our relevant awareness-raising action; and, thus, it has to be excluded that such campaigns can result in forms of abuse (Paras.81-82).

The Communication Regulatory Authority

36. As for Para.42 (AGCOM tasks), in addition to those competences already mentioned in the report, this Authority has been entrusted with all those functions, of a regulatory and control nature, relevant to the postal sector, in accordance with Art.1, paras.13 and 14, of Law Decree No. 201/2011, as converted into law (with amendments) by Act No. 214/2011.

37. As for Para.46 (Intellectual property), AGCOM has introduced rules on the protection of copyright by Resolution (No.680/13/CONS), dated December 12, 2013, by which it identifies its jurisdiction in respect of those breaches occurring on electronic communications networks in accordance with Legislation on Copyright (Act No. 633/41 - in particular Article 182 bis, by which both this Authority and SIAE are entrusted, within their respective responsibilities, with supervisory powers) and Legislative Decree on

Electronic Trade (Act No.70/2003 - entrusting AGCOM with the power to order the intermediary service providers to put an end to the violations committed in the network).

- With specific regard to the audiovisual media services, it should be stressed that Parliament has entrusted the above Authority with specific regulatory and normative powers in accordance with Art.32bis of Legislative Decree No. 177/2005 (entitled "Consolidated Text on Audiovisual and Radio Media Services").

38. As for Paras.48-49 and 83 (Appointment and selection procedures), to ensure transparency in the criteria and procedures for the appointment to the Board of the Authority under reference, strict prerogatives have been envisaged in line with the European Framework on electronic communications (EU Directive 2002/21/EC): this also applies to its independence in decision-making.

- The appointment procedures for both the members – being elected by Parliament - and the President – being appointed by decree of the President of the Republic upon proposal of the President of the Council of Ministers, in consultation with the Minister responsible - are laid down in Article 1, para.3 of Act No.249/97 (by this Act AGCOM has been established).

39. Members of the Authority "shall be selected from representatives with relevant recognized highly professional skilis" pursuant to Article 2, paragraph 8, of Act No. 481/95. As for the duration of their mandate, they "shall hold office for seven years and cannot be renewed". The strict regime of incompatibility laid down by law ensures that the holder of this office is exclusively dedicated to his/her mandate - besides forbidding him/her to take certain positions or alternatively requesting him/her to leave the previous position at the time of his/her recruitment.

40. The strict regime of *cooling off* goes even beyond the requirements for independence under relevant European provisions as inferred under Article 3 of Directive No.2002/21/EC (the so-called Framework Directive) (Para. 83).

Anti-trust

41. With regard to the relevant legislation, it is worth-mentioning that among the various positive reforms introduced so far, the Law on the Public Broadcasting System (Act No. 112/2004) has effectively moved forward the switch from analogical to digital broadcasting, with the aim of increasing the number of TV channels (a process initiated in 2008). The reform so introduced by Act No. 112 has actually given greater independence and organisational autonomy to the public radio and television broadcasting service franchisee than it had in the past.

42. The law has now placed RAI (which was previously classified as a "Company of national interest" and therefore governed by special laws) on an equal footing with all other joint stock companies, also in terms of their organisation and management (Article 20(1)). The new RAI Articles of Association adopted following the merger of RAI and RAI-Holding - which initiated the privatisation of the franchisee company - make provision for the main statutory innovations in this regard.

43. Bearing all this in mind, mention should be made in the Report of the following:

- the start-up of terrestrial digital broadcasting as a result of Act No.112 has increased the number of channels free of charge by between four-fold and six-fold, and has consequently increased the television offering and enhanced pluralism - bringing Italy to be one of the countries with the highest number of channels ever, in the world;

- the 20% programme and revenue thresholds in the SIC is additional to the ban on a dominant position on individual markets, which are identified by the Communications Regulatory Authority using criteria laid down by European law, and taking into account other elements such as audiences;

- the SIC takes account of the convergence of the media, adjusting the criterion that already existed in Italian law (the Mammì Act and the Maccanico Act) to keep pace with technological and market developments; no company can ever acquire a dominant position on any one market. The whole purpose of the SIC is to enable companies, particularly press publishers, to accede to the television market while at the same time, under skewed statutory provisions in their favour, it places a limit on television companies which are prohibited, until the end of 2014, from acquiring equity interests in newspaper publishing companies, and on companies with revenues in excess of 40% from the telecommunications market, by prohibiting them from exceeding 10% of the aggregate SIC revenues;

44. As for Para.54 (pluralism), with the development of terrestrial digital broadcasting Italy now counts 19 "multiplexes" managed by eight different providers, to which three more operators are to be added in the near future - following a tender intended only for new comers and small operators. More specifically, it is worthy-recalling that:

- Two out of the existing operators currently managing four "multiplexes" (intended to be increased up to six) as a result of market operations, have relinquished publishing-related activities and have become "pure" network operators or, alternatively, have entrusted independent publishers with the totality of their broadcasting capacity;

- The Italian television industry counts 94 free-to-air television programs of 26 different media groups (including NBC Universal, SKY, Fox International, Feltrinelli, Discovery International, Cairo, and so forth) - These numbers already speak for themselves. Moreover, in order to ensure pluralism in the media sector, AGCOM carries out a constant monitoring (24h/24) of fifteen national TV channels belonging to seven different companies (RAI , RTI, La- Effe, LA7, Viacom, L'Espresso Group, SLY Italy srl).

45. As for the issue of cross-ownership (Paras.55,84), in this wider multimedia context the division of the communications market into limited segments, each with an anti-competitive ceiling on audience share no longer appears to be compatible with the strong impetus exerted by new technologies, which is encouraging companies to seek cross-fertilisation and synergies. The principles regarding the protection of competition remain firm, in particular the ban on attaining a dominant position in each component market of the integrated communications system while cross-ownership arrangements between the television and publishing sectors provide an opportunity for the development of companies and, indeed, the entire sector.

46. Law Decree No. 150/2013 as converted into law by Act No. 15/2014, entitled "Extension of deadlines set by relevant laws" sets forth the extension of those provisions of the Consolidated Text on cross-ownership between press and TV. In particular, Article 12, entitled "Extension of terms in the communications industry", has determined that: "1. Under Article 43, paragraph 12 of Legislative Decree of 31 July 2005, No. 177, the words "31 December 2013' are to be replaced by the following: "December 31st, 2014".

- We have to bear in mind that pluralism is protected by setting *ex ante* restrictions while competition is protected through *ex post* measures. Furthermore, whereas competition law prohibits the abuse of a dominant position and agreements, acquisitions and mergers that are detrimental to competition, protecting pluralism

entails the need to prevent the establishment of a dominant position to the detriment of pluralism

47. It is useful to point out once again that in addition to the *ex ante* thresholds examined above, Act No.112 places the further threshold for guaranteeing pluralism by prohibiting the constitution of a dominant position on any individual market comprising the integrated communications system (Article 14 and Article 15(2), first indent). This means that a company operating in the communications industry is not only required to comply with the 20% upper limit on the SIC revenues, and in the case of radio or television broadcasting companies, the 20% upper limit on programmes, but is also prohibited from creating a dominant position on any individual market as these are identified by the Communications Regulatory Authority. It is the responsibility of the Communications Regulatory Authority to identify these markets, and to do so by applying the principles set out in Articles 15 and 16 of the European Parliament and the European Council Directive 2002/21/EC of 7 March 2002 (Framework Directive), considering not only revenues but also levels of competition within the system, entry barriers, the economic efficiency of the company concerned, the audiences for the radio and television programmes, and the quantities of published products, and cinematographic or audio recording works (Para.84).

The situation of journalists

48. At the Ministry of the Interior-Department of Public Safety – mention has to be made of the Central Bureau of Inter-Forces for Personal Security (acronym in Italian, UCIS) that provides guidance to ensure that the most appropriate protection measures be implemented with regard to both domestic and foreign dignitaries, as well as with regard to those people, and their relatives, who, for their duties or for other proven reasons, are exposed to danger or threat, potential or actual (See Art.1, lett. N, of Act No.133/2002). As for the latter, such a situation usually – and this must be stressed – mainly concerns those journalists investigating organized crime.

- The UCIS, jointly with the prefects concerned, determines the level of risk in light of the degree of exposure to the danger by the person to be protected (from the 1st to the 4th level, in descending order of danger), in accordance with Ministerial Decree dated 28.5.2003. For example, with reference to the threats received by a famous Italian journalist, by organized crime, the UCIS provides for a protection measure ranking the 2nd level of risk.

49. With regard to the fair pay of journalists, it is worth-mentioning the recent Act No. 233/2012, entitled "Fair pay in the journalism sector," by which it has been set up a Committee at the Department for Information and Publishing within the Presidency of the Council of Ministers, consisting of representatives from both the Ministries/public bodies responsible for employment and the social partners concerned (editors and journalists). This Committee has been mandated to identifying concrete measures to ensure "fair pay" (i.e. the pay must be commensurate with the quantity and quality of the work). The above Act provides, inter alia, for a severe sanction for those publishers who will not consider and apply it. In such a case, they will not benefit from whatsoever direct contribution for publishing and from any other public benefits/incentives.

50. Over the last months, the above Committee, chaired by the acting Under-secretary of State for Information and Publishing, has conducted various hearings, among others, of journalists. At the end of this process, the Committee has collected a number of significant data on the reality and extent of the situation of free-lance journalists. Following the confidence to the newly-established Renzi-led Government (February 2014), the above Committee has just resumed its work; and it is its intention to submit a set of measures to ensure fair pay for journalists (Paras.85-86).

Access to information law

51. As for Paras.62, 87 (Access to information law), there are new transparency-related obligations originating from the so-called Transparency Decree (Legislative Decree No.33/2013) – that are not mentioned in the UN report under reference. Against this background, we would also like to stress that "the total disclosure" mentioned in the Report under reference lacks and cannot challenge the necessary balance with the right to privacy. Therefore it should be added that: "The recent changes in the law on advertising and transparency of Public Administration (See the latest Legislative Decree No.33/2013) have made necessary an *ad hoc* intervention by the National Authority on Personal Data Protection aimed at ensuring compliance with personal data protection-related obligations when fulfilling publishing-related obligations online.

52. In issuing a positive opinion [Doc. Web No. 2243168], the above Authority has put in place a series of "posts" by asking that some provisions were modified with the aim of introducing more safeguards. The need to set a specific control on the activities of the Public Administration does not have to bring about disproportionate forms of dissemination of information, which may ultimately end up damaging the rights of citizens, especially the most disadvantaged. Therefore, transparency must be balanced with those rights of equal constitutional status, as is the case with the right to privacy and personal data protection – as prescribed, inter alia, by relevant EU Legislation. It should be also noted that the aforementioned provisions apply to all Public Administration offices (institutions and PA, at large). Therefore, contrary to what has been reported, there is no distinction at all when considering the access to PA offices in accordance with the above Legislation (See Para.62, p.16).

- More generally, mention has to be made of Act No. 241/1990, as amended and profoundly innovated in 2013 by Legislative Decree No.33/2013, on the duties of publicity, transparency and dissemination of information by Public Administrations. The new system is more oriented towards a faster access to relevant documentation - as an essential step within the administrative process - being reserved to the right-holders or those entitled to a specific interest so as to place the citizen as such and his/her right of access to information at the core of the administrative system. Within this new legal framework, administrative transparency is the most effective way to bring Institutions closer to citizens, allowing a deeper social control over the PA activities while preventing and combating illegality and corruption.

53. The principle of transparency is expressed in the concept of "total access" to data and information. The disclosure of data and information is the main tool to enable citizens to exercise the right to control over the performance and management of public functions besides reducing "the opacity/shadow" in which sometimes illegal or otherwise harassing behavior towards users or the public can occur.

54. As already noted, all Public Administration offices/all Government departments are duty-bound to transparency - not only those more closely linked to the Presidency of Ministers' Council –, such as local Authorities, educational Institutions, schools and universities, Chambers of Commerce, non-economic public bodies at the national, regional and local levels, the National Health-care System, and so forth. In this light, all areas in which the citizen comes in contact with the Institutions do fall within the provisions under reference (See also Article 1, paragraph 2, of Legislative Decree No.165/2001).

55. The legislation under reference requires that all data to be made publicly available are accessible online without any charge for the access, either with regard to the registration requirements from the users, or the activation of contentious or quasi-contentious procedures. More specifically, Article 5 introduces "Civic access," an institute providing

for the right for any citizen to request a PA office to promptly publish on institutional websites, any information, documents and data when the absence is detected.

56. Failure to comply with the publication-related obligations also entails specific sanctions for managers/executives, including the possible liability for damage to the image of the Administration itself.

57. Considering the above new context, the quoted study "The Silent State" - although recently published - refers to a system no longer in force and superseded by Legislative Decree No. 33/2013 – not even quoted in the Report under reference.

Hate speech

58. The stigmatisation of certain ethnic or social groups remains a matter of serious concern for the Government, State and local Authorities. While aware of this challenge, Italy remains strongly committed to eradicating racist or xenophobic attitudes.

59. The Italian legal framework contains indeed a wide range of criminal, civil and administrative law provisions to combat racism. Instigation to racial hatred is severely punished by the Criminal Code and the law is enforced with no exceptions. In particular, by the legislation in force (the so-called "Mancino Law", as modified by Act No. 85/2006), it is punished the constitution of organizations, associations, movements or groups that have, among their aims, the incitement to discrimination or to violence motivated by racial, ethnic or religious ground. It also provides for a special aggravating circumstance for all those crimes committed on the ground of discrimination or racial hatred. For instance, in two separate cases, the mayor of Verona was convicted for propaganda of racial ideas; and the deputy mayor of Treviso was convicted for instigation to racial hatred, respectively.

60. It is also worth-reiterating that the Italian legislation (Legislative Decree No. 215/2003) aims at implementing non-discrimination and equality for all individuals regardless of their racial or ethnic origin (Art. 1) besides envisaging civil action against discriminatory acts committed by individuals or public administration on racial, ethnic or religious grounds (Arts. 4 and 5) and on nationality grounds (Art. 44 of Legislative Decree No. 286/1998 governing immigration and the status of foreign nationals).

61. Needless to say, the fight against racism and xenophobia is a long-term process. To be effective, legislative and judicial measures must be complemented by efforts at all levels, particularly through the education system. This is why the Ministry of Education has developed specific educational programmes for primary and secondary schools with a marked intercultural approach.

62. As noted, the Italian legal system includes specific provisions to combat racist and xenophobic speech, including those actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. As for the use of racist or xenophobic language in politics, by law it is laid down that the judicial authorities are entrusted and have to verify the existence of criminal contents in documents, speeches and programs made by political representatives. Moreover, UNAR (and OSCAD) sistematically gives notice of existence of such contents to the Authorities concerned.

63. As already mentioned, some public and elected officials have been prosecuted in the recent past for incitement to racial hatred and propaganda of racial ideas. Thus in the Special Rapporteur's report, mention should be made also of the role played by UNAR and OSCAD, respectively.

64. As for the National Office Against Racial Discriminations (acronym in Italian, UNAR), UNAR is the National Equality Body (www.unar.it), entrusted by law, with the

promotion of equality and the removal of discriminations (Art.7 of Legislative Decree No. 215/2003) in accordance with EU Directives 2000/43/EC and 2000/78/EC and their respective transposition decrees (Decree No. 215/2003 and Decree No. 216/2003), establishing the principle of equality with respect to all forms of discrimination on grounds of gender, ethnicity, race, sexual orientation, religion, personal beliefs, age and disability. To this end, UNAR has taken concrete steps to ensure that the protection against discrimination is effective and properly enforced.

65. Unlike Equality Councillors, UNAR is not authorised to take legal action. However this provides legal support to those NGOs with *locus standi* and admitted to its Register. In this regard, UNAR systematically issues opinions to victims and associations with a legitimate interest to represent them since 2010. Plus, over the years UNAR has been sensitizing relevant associations on the importance of the above Register, besides constantly updating the relating list of Associations in accordance with Art.5 of Legislative Decree No. 215/2003 – so that as of today we count approx. 480 Associations. In recent years, UNAR has been enhancing its tools through an integrated action in support of victims – also through an MoU with OSCAD, to which to transmit grounded reports of hate-related crimes (In this regard it should be also considered that even in the event of reports which are not relevant from a criminal law standpoint, they are the subject of specific actions vis-à-vis internet service providers, in accordance with Legislative Decree No. 70/2003).

- As a way of example, it might be recalled that upon UNAR's initiative, the Italian website of "stormfront" was shut down by the Postal Police; and four people were put under arrest in Rome, on November 16, 2012.

66. UNAR's practice is to provide assistance at: the pre-judicial stage, the judicial stage and during the subsequent stage - following the verdict, up to the concrete removal of the discrimination.

- Before any means of protection, UNAR takes charge of the discriminatory event reported to its Contact Center. The latter informs the victim of the remedies available under the law to defend his/her right.

- Once the judicial action is under process (upon initiative by the Association or the victim itself), UNAR provides, inter alia, legal advice. By the above Associations (undertaking legal action), these opinions are quite often submitted *ad adiuvandum*.

- At the third stage, the removal of the discrimination (in general, the enforcement of the verdict), the Office monitors and oversees the enforcement procedure; and thus the effective removal of and redress for the damages. It also keeps contact with the victim.

67. In brief, the assistance provided by UNAR focuses on the following activities:

- It informs victims of remedies that may be sought and encourages them to take action, also through the Associations authorized to act on their behalf;

- It helps victims and the relevant Associations by formulating opinions;

- It monitors all relevant judicial proceedings initiated somehow through a report to UNAR Contact Center;

- In addition to its website, by publishing opinions and recommendations, UNAR spreads information and raises awareness of the anti-discrimination legislation and the rulings of national and supra-national courts in order to ensure victims' protection.

68. Highly innovative and effective initiatives and actions have been introduced since 2010, with the aim of enhancing protection and support for victims, including awareness-raising campaigns, especially taking place within the "national week against violence framework[2]", as well as capacity-building, monitoring and data collection exercises. It also supports other relevant Institutions, such as OSCAD. Inter alia, mention has to be made of the following activities carried out: 1. The free civil mediation service; 2. Collaboration with the National Law Council. Plus, on a more general note, it is also worthy of mention that UNAR is the National Contact Point for the elaboration and implementation of the First National Strategy on Roma Integration in accordance with EC Commission's Communication No. 173/2011. It also adopted the First National Strategy on LGBTI people's rights. Soon, it will also launch the second Action Plan against Racism and Racial Discrimination.

69. Within the above framework, UNAR participates in the relevant Council of Europe campaign, entitled "No hate speech" (http://www.nohatespeech.it/). In this regard, a specific inter-ministerial working group has been established at the Presidency of Ministers' Council. Plus, in the coming months, it is intention of this Office to promote an integrated awareness-raising campaign involving Italian representatives of Facebook, Youtube, and Twitter.

70. The role of the Observatory for the Security against Discriminatory Acts (acronym in Italian, OSCAD) should be mentioned since this was established by a decree of the Chief of Police and Director General of Public Security, dated 2 September 2010, for ensuring the right to equality before the law for all and to be protected against any acts of discrimination and hate crime.

71. OSCAD, set up within the Public Security Department - Central Directorate of Criminal Police - is headed by the Deputy Director General of Public Security and Director General of Criminal Police, and is made up of high-ranking representatives of the National Police and of the Carabinieri Corps.

72. More specifically, OSCAD liaises with relevant CSOs and with other public and private Institutions dealing with the fight against discriminatory practices (In particular, close cooperation has been established with the Italian Equality Body (that is the "UNAR": Office for the Promotion of Equal Treatment and the Elimination of Discriminations at the Presidency of the Council of Ministers) by signing an MoU, on 7 April 2011. For instance, according to the above Memorandum, UNAR shall submit to OSCAD all grounded cases of discrimination as reported to its *Contact Centre* which in turn will be prosecuted by Judicial Authorities); receives reports from Institutions, relevant associations and private citizens on discriminations/hate crimes so as to effectively monitor discriminatory practices based on ethnicity or race, religion, sexual orientation and disability (via e-mail at the following address: oscad@dcpc.interno.it; via fax at the following numbers: 06 46542406 and 0646542407); launches targeted interventions on the territory on the basis of the reports received; monitors any progress with regard to relevant complaints; provides advice; organises relevant training modules for law enforcement (However under no circumstances reporting an act of discrimination to OSCAD may replace either filing a police report or calling the 112 (Carabinieri) or 113 (National Police) emergency numbers).

73. Since its inception (up to 15 April 2014), OSCAD received 809 reports, 322 of which specifically related to acts of discrimination and constituted an offence, as follows:

[2] As a way of example, please refer to **http://www.seyf.eu/index.php?option=com_content&view=article&id=57:seyf-contro-le-parole-d-odio&catid=8:news&Itemid=105**

Racial or ethnic motivation: 52%; Sexual orientation/Gender Identity: 26%; Religious belief: 17%; Age: 2%; Disability: 2%; Other 1%

74. Since its inception, training has been defined as one of the main priorities of OSCAD, aware that an in depth knowledge of the complex, multi-faceted world of discrimination is a pre-requisite to raise awareness, among law enforcement staff, of the need to re-double efforts to preventing and combating all forms of discrimination, including hate crimes. In May 2013, an MoU was also signed with ODIHR for the implementation of the TAHCLE Programme (Training Against Hate Crimes for Law Enforcement)[3].

75. As for 2014, the training sector has been extremely enhanced by improving OSCAD capabilities through new and specific forms of cooperation with relevant Associations, such as Amnesty International-Italy and the Lenford Network (the latter being specialized on the protection of LGBT people's rights).

76. Further, in order to improve training and interaction between trainers and participants, OSCAD has envisaged small classes of 30/50 units in line with the most effective training strategies. Accordingly, seminars have been structured in 5 periods, focused on specific topics such as the role of OSCAD and UNAR respectively; hate crimes, definition and impact; legal instruments against hate crimes; best practices and analysis of practical cases.

77. From a substantial law standpoint, as for hate crimes, Bill No. 1052, on "Measures for countering homophobia and transphobia" is under process before the Italian Parliament. Its Article 1 amends both Act No. 654/75, by which Italy ratified ICERD, and Law Decree No.122/1993 as converted into law by Act No.205/993 (the so-called Mancino Law). In particular, Article 1, paragraph 1, letters a) and b) amends Article 3 of Act No.654/1975, by adding to the conducts of incitement, violence and conspiracy to discrimination, also those grounded on homophobia or transphobia.

78. Paragraph 1, letter c) adds paragraph 3-bis to the said Article 3 of Act No.654/1975. This paragraph specifies that, under the 1975 Act, "does not constitute discrimination or incitement to discrimination, the free expression of opinions related to the pluralism of ideas, provided that these opinions do not incite to hatred or violence."

79. Moreover, its Article 2 will cover statistics on discrimination and violence - in order to verify the effectiveness of those policies directed to combat relevant forms of discrimination and violence. Article 2 provides that the National Institute of Statistics - as part of its institutional responsibilities – prepares statistical surveys, at least, once every four years, so as to measure and identify the main features of these conducts while helping those most at risk.

80. In the biennium, 2011-2012, relevant crimes committed and ascertained amounted to 33 (Source: Ministry of Interior) (Para.88).

National HR Institution

81. At the opening of the new Legislature (XVII), various draft pieces of legislation on the establishment of a national commission on human rights have been submitted - though a

[3] In February 2014, OSCAD and ODIHR launched the TAHCLE programme with an initial training course for 100 National Police and 60 Carabinieri officers, respectively. In view of next steps (July 2014), OSCAD and ODIHR have already scheduled a tree-day relevant training of trainers course for 30 senior officers (15 from National Police and 15 from Carabinieri).

parliamentary discussion has not been initiated yet. In this respect, mention has to be made of the following draft laws:

- A. C.1004 on the establishment of the National Commission for the promotion and protection of human rights, as submitted by Hon. Khalid CHAOUKI, on May 20, 2013, and then assigned to the First Committee on Constitutional Affairs on July 29, 2013;

- A. S.865 – on the establishment of the National Commission for the promotion and protection of human rights, submitted by Sen. Emma FATTORINI on June 21, 2013;

- A. C.1256 – on the establishment of the National Commission for the promotion and protection of human rights submitted by Hon. Barbara POLLASTRINI, on June 24, 2013.

82. Apart from the above, mention has to be made also of the following relevant Authorities: the establishment, within the Ministry of Labour, of the National Guarantor on the Rights of the Child and of the National Observatory on the promotion and protection of the rights of the persons with disabilities, respectively; and more recently the adoption of Law-Decree No. 146/2013 (December 23, 2013), as converted into law last February 2014, by which it has been envisaged the establishment of the National Authority/Ombudsman for the rights of detainees (Following the ratification of the Optional Protocol to the UN Convention against Torture by Act No.195/2012 and the so-called pilot-judgment of the European Court on Human Rights on the case of Mr. Torreggiani and Others v. Italy (Complaints No. 4357/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, 37818/10).

83. Last February 21st, the Italian Parliament converted into law, Law-Decree No.146/2013 aimed at addressing the issues of prison overcrowding and full respect for the fundamental rights of the detainees and prisoners.

84. In a nutshell, this is a collegial body, to be established at the Ministry of Justice, consisting of a Chairman and two members appointed by the President of the Council of Ministers. The mandate of the Ombudsman is to monitor and oversee the treatment of the persons deprived of their liberty in places of detention and that the execution of relevant measures is in accordance with the Constitution, relevant legislation and international standards. For this purpose, it is attributed to him/her: the power of visit, even without previous authorization, the prisons, correctional facilities, judicial psychiatric hospitals and all those other Institutions in which inmates are the recipients of detention security measures, including also the CIE; the power to require information and documents to the Authorities responsible for the relevant facilities; and finally the power to formulate specific recommendations (Para.89).

Conclusions

85. **Before concluding – also in view of the upcoming consideration of Italy under UPR-second cycle (October 2014) -, it is worthy of mention that since June 2010 Italy has been implementing over 80% of all the 2010 UPR recommendations (See para.72). Along these lines, Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating with all UN Special Procedures.**